

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 VERNON WAYNE MCNEAL,

12 Plaintiff,

2:05-cv-0441-GEB-EFB-P

13 vs.

14 EVERT, et al.,

15 Defendants.

ORDER

16 _____/
17 Plaintiff is a state prisoner proceeding without counsel in an action brought under
18 42 U.S.C. § 1983. On February 11, 2008, plaintiff filed a request for reconsideration.

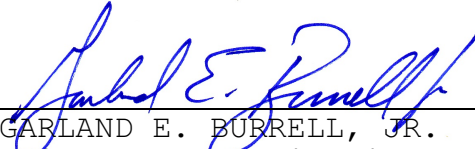
19 This case was referred to a United States Magistrate Judge pursuant to 28 U.S.C.
20 § 636(b)(1)(B) and Local General Order No. 262. On September 24, 2007, the magistrate judge
21 issued findings and recommendations that defendants Evert and Bitle should be dismissed
22 because plaintiff failed to return the USM-285 forms necessary to effect service on said
23 defendants. Plaintiff filed objections to the findings and recommendations. Plaintiff also filed a
24 declaration regarding the non-service of defendants Evert and Bitle. After reviewing the entire
25 file, the undersigned issued an order adopting the findings and recommendations in full, and
26 dismissed defendants Evert and Bitle from this action. Plaintiff now requests that the court

1 reinstate Evert and Bitle as defendants and give plaintiff additional time to locate their addresses
2 for purposes of service of process.

3 Although motions to reconsider are directed to the sound discretion of the court,
4 Frito-Lay of Puerto Rico, Inc. v. Canas, 92 F.R.D. 384, 390 (D.C. Puerto Rico 1981),
5 considerations of judicial economy weigh heavily in the process. Thus Local Rule 78-230(k)
6 requires that a party seeking reconsideration of a district court's order must brief the "new or
7 different facts or circumstances . . . [which] were not shown upon such prior motion, or what
8 other grounds exist for the motion." The rule derives from the "law of the case" doctrine which
9 provides that the decisions on legal issues made in a case "should be followed unless there is
10 substantially different evidence . . . new controlling authority, or the prior decision was clearly
11 erroneous and would result in injustice." Handi Investment Co. v. Mobil Oil Corp., 653 F.2d
12 391, 392 (9th Cir. 1981); see also Waggoner v. Dallaire, 767 F.2d 589, 593 (9th Cir. 1985),
13 cert. denied, 475 U.S. 1064 (1986).

14 Plaintiff has failed to demonstrate any new or different facts or circumstances
15 which did not exist or were not shown upon the prior motion. See E.D. Local Rule 78-230(k).
16 Accordingly, IT IS ORDERED that plaintiff's request for reconsideration is hereby DENIED.

17 Dated: January 15, 2009

18
19 
20 GARLAND E. BURRELL, JR.
21 United States District Judge
22
23
24
25
26